

U.S. COURT OF APPEALS
FOR VETERANS CLAIMS

OCT 21 2016

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IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

Victor K. Wilson
Appellant,

V.

Robert A. McDonald
Secretary of Veterans Affairs
Appellee.

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Vet.App. No. 15-1867

ON APPEAL FROM THE
Board of VETERANS APPEALS

REPLY BRIEF FOR APPELLANT,
Victor K. Wilson THE VETERAN

I. ISSUE PRESENTED

Whether the Court should affirm the Board of Veterans' Appeals February 24, 2015, decision, which denied entitlement to an effective date prior to September 8, 2011, for the grant of entitlement to service connection for a lumbar strain.

II. Argument

The Court should remand the Board's February 24, 2015 decision that denied entitlement to an effective date prior to September 8, 2011 for the grant of entitlement to service connection for a lumbar strain, due to the fact that the Appellant Counsel filed arguments not supported by the record, and errors that did not apply to the Appellant. The errors by Counsel caused the board to deny the appellant claim and was prejudicial error.

In the opinion or order given by the Veterans Law judge, S.S. Toth it was mention that the Appellant referenced (CUE) clear and

unmistakable error and included general information regarding CUE claims. Judge Toth went on to explain the requirements of CUE which is, "A (CUE) claim must contain" "some degree of specificity as to what the alleged error is." Fugo V. Brown, 6 Vet. App. 40 (1993). Judge Toth continues with this statement pertaining to the Appellant Counsel claim, "As such, while the Veterans representative referenced CUE generally in the October 2014 Appellant's Brief, the required specificity was not present and therefore a CUE claim was not raised. Since, the Appellant Counsel raised this claim without any supporting evidence it caused the appellant's denial. (See Page, 6-7, BVA, Feb 24, 2015)

It was also a prejudicial error because it caused the BVA to decide the issue incorrectly based on Appellant Counsel errors. If argued correctly the claim could have been remanded and the effective-date of February 28, 2006 would have been affirmed.

In regards with the duty of assist the Veteran, the VA failed in this regard causing the Appellant claim to be denied. Again, according to the order of the Board on February 24, 2015, Page-7, Judge Toth mentioned that the Appellant submitted additional statements, as well medical evidence by the Veteran. The Appellant signed an authorization and consent to release information form on October 20, 2011 to obtain those same additional statements and medical evidence which the Appellant submitted with his motion for reconsideration. (See RBA, Page, 165-166). The VA never notified the Appellant as to why the records was not obtained. The Appellant had to obtain these records on his own and submit them to the VA which caused my claim to be reopened. If the VA had submitted the additional statements, and medical evidence to the Board, the Board would have remanded the Appellant claim back to the VA, therefore, keeping the Veterans effective date of February 28, 2006. The evidence was key to granting the Appellant disability in May 2012.

III.

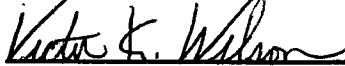
CONCLUSION

The Appellant, Victor K. Wilson is asking the Court to remand this case back to the VA and Order them to grant entitlement to an effective date of February 28, 2006 for the reasons mentioned in this brief.

Certification

On October 17, 2016, I, Victor K. Wilson Certify that this Reply Brief was placed in the mailbox on said date mentioned above.

Respectfully Submitted,



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